

REMARKS

Claims 1-41 were previously pending in this application. Claims 1, 18, 20, 21, 22, 23, and 28 have been amended. No new claims have been added. As a result claims 1-41 are pending for examination with claim 1 being an independent claim. No new matter has been added. Support for the amendments can be found in the originally filed specification and figures, for example, FIGS. 9-11.

Finality of the Instant Office Action

Applicants successfully petitioned to have the finality of the immediately preceding Office Action withdrawn. (Office Action at page 2.) However, the instant Office Action is again a final Office Action. Thus, the Applicants have yet to receive a non-final Office Action subsequent to the filing of the Request for Continued Examination (“RCE”) with amended claims -- one year ago. Accordingly, the Applicants request that the finality of the instant Office Action be withdrawn.

Applicants’ Petition, filed on November 17, 2006, described at least two reasons that the finality is premature given the current status of this application. First, the claims pending at the time of filing the RCE are not drawn to the same invention as those that were previously pending. Second, the grounds for the rejection are different than the grounds of record before the mailing of the first-action final Office Action. In the instant-final Office Action, the Examiner appears to retract the previous reliance on U.S. Patent No. 5,983,933 to Ohmi et al. (“the ‘933 patent”) in an effort to address the second of the two preceding points. The instant-final Office Action, however, does not address Applicants’ first grounds at all. Applicants maintain that both the claims as amended herein and those filed with the RCE are directed to a different invention as described in greater detail in the Petition, see paragraph 10, for example. Accordingly, Applicants respectfully request the withdrawal of the finality of the instant Office Action. Should the Examiner continue to maintain the finality of the instant Office Action, Applicants request a phone conference with the Examiner and his supervisor to discuss the matter.

Claim Amendments

Claim 1 as amended herein recites “a unitary substrate” (emphasis added). Should the Examiner continue to maintain the finality of the instant Office Action, Applicants respectfully request entry of the claim amendments because the amendments place the claims in condition for allowance. In the alternative, should the Examiner assert that the claims presented herein are not allowable, Applicants respectfully request entry of the claim amendments because the amendments place the claims in better form for appeal.

Rejections Under 35 U.S.C. §103

The Office Action rejects claims 1-15, and 18-34 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,629,546 to Eidsmore et al (hereinafter Eidsmore) in view of U.S. Patent No. 6,615,871 to Ohmi et al (hereinafter Ohmi). Applicants respectfully submit that the combination asserted by the Examiner is improper and fails to establish a *prima facie* case of obviousness because Eidsmore teaches away from a combination in which a substrate includes a fluid passageway formed within the substrate body and because neither Eidsmore or Ohmi teach or suggest a unitary substrate that includes the features recited in the claims.

The Office Action asserts that “[t]he claimed device is a step back in the art from Eidsmore et al. and falls squarely in the ambit of §103.” (Office Action at page 2.) Applicants respectfully assert that the applicable legal standard of obviousness under 35 U.S.C. §103(a) is not whether the invention is a “step back” but whether all the limitations claimed are taught or suggested in the references. (See MPEP §2143.03.)

Eidsmore expressly describes the disadvantage of employing a substrate body with a fluid passageway formed within it and describes that “the present invention” of Eidsmore reduces the volume of expensive material “as compared to the conventional ... blocks,” i.e., reduces the volume of expensive material when compared with blocks that include an internal fluid passageway. (Col. 1, lines 53-59 and Col. 5, lines 35-54.) As a result, Eidsmore avoids the use of internal fluid passageways in a substrate because “prior art modular component blocks use a large volume of expensive material” while “the present invention [of Eidsmore] provides a gas flow passage that is defined by a bridge fitting 50 which has a substantially reduced volume of expensive material ... this results in a more economic gas path manifold which is cheaper and

easier to make than the prior art component blocks.” (Col. 5, lines 47-54.) Indeed, the entire disclosure of Eidsmore is directed to manifold assemblies designed to conduct process fluid through manifold bridges instead of through fluid passageways formed in the body of the substrate. (See MPEP §2143.02; subsection (I), “[i]n determining the difference between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious;” and subsection (VI), “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.”)

Because Eidsmore discredits and expressly teaches away from the use of internal fluid passageways in a substrate and because none of the cited references teach or suggest a unitary substrate including the recited features, the combination proposed in the Office Action is improper and the Office Action fails to present a *prima facie* case of obviousness in view of claim 1 as amended herein.

Accordingly, for at least the above reasons, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. §103(a) be reconsidered and withdrawn. In addition, Applicants respectfully assert that each of the dependent claims 2-15, and 18-34 is also allowable because each depends either directly or indirectly from claim 1 and request that the rejections of claims 2-15 and 18-34 also be reconsidered and withdrawn.

The Office Action rejects claim 37 under 35 U.S.C. §103(a) as being unpatentable over Eidsmore in view of Ohmi, and in further view of U.S. Patent No. 6,634,385 to Symington (hereinafter Symington). Claim 37 depends from claim 1. Applicants respectfully assert that claim 37 is allowable because Symington also fails to cure the deficiencies of Eidsmore and Ohmi as applied to claim 1 and request that the rejection of claim 37 also be reconsidered and withdrawn.

Allowable Subject Matter

Claims 16-17, 35-36 and 38-41 are indicated as containing allowable subject matter. Applicants have deferred re-writing claims 16-17, 35-36 and 38-41 in independent form in view of the arguments provided herein regarding the patentability of the independent claim from which they depend.

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. This application should now be in condition for allowance; a notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed payment, please charge any deficiency to Deposit Account No. 50/2762, Ref. No. C113-700110.

Respectfully submitted,
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